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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,432	06/29/2001	Puneet Kukkal	42390P11150	8961

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EXAMINER

BILGRAMI, ASGHAR H

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,432

Applicant(s)

KUKKAL, PUNEET

Examiner

Asghar Bilgrami

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Achour et al (U.S. 6,363,260) and (Jungck et al (U.S. Pub No. 2002/0009079).

3. As per claims 1, 9, 10, 11, 14, 16, 17, 18, 19, 20, 24, 29 & 30 Achour disclosed a method comprising: generating a preferred list of edge sites from a plurality of edge sites (col.7, lines 55-62) upon receiving a media content request from a client (col.6, lines 30-42); providing the preferred list to the client (col.8, lines 13-24). However Achour did not explicitly disclose requesting the media content by accessing a first edge site from the preferred list; providing the media content from the first edge site to the client; monitoring the providing of the media content from the first edge site to the client for disturbance; requesting the media content by accessing a second edge site from the preferred list when encountering the disturbance; and providing the media content from the second edge site to the client.

In the same field of endeavor Jungck disclosed requesting the media content by accessing a first edge site from the preferred list (page.3, paragraph. 35); providing the media content from the first edge site to the client (page.3, Paragraphs. 36); monitoring the providing of the media content from the first edge site to the client for disturbance (page.15, paragraph.111 & page.25, paragraph.184); requesting the media content by accessing a second edge site from the preferred list when encountering the disturbance; and providing the media content from the second edge site to the client (page.8, paragraphs.73 & page.9, paragraph.75).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated traffic monitoring capability and switching over to an alternate traffic source site as taught by Jungck in a system offering plurality of traffic source sites to a requesting client as taught by Achour to improve the quality of service available to the client and intern making the network more versatile and resilient to failures.

4. As per claim 2 Achour-Jungck disclosed the method of claim 1, wherein the client comprises a viewer (Jungck, page 4. paragraph 44).

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5. As per claim 3 Achour-Jungck disclosed the method of claim 1, wherein the client comprises a listener (Jungck, page 4. paragraph 44).

6. As per claims 4, 5 & 12 Achour-Jungck disclosed the method of claim 1, wherein the generating the preferred list is performed by a data center, based on a predetermined criteria (Achour, col.7, lines 55-67 and col.8, lines 1-12 & 13-24).

7. As per claims 6, 7, 8, 27 & 28 Achour-Jungck disclosed the method of claim 1, wherein the requesting the media content is performed by an Intelligent Media Accessor (Jungck, page 7. paragraph 65).

8. As per claims 13, 15 & 25 Achour-Jungck disclosed the method of claim 12, wherein the predetermined criteria may include availability of the media content, geographical proximity of the plurality of edge sites, network availability, and quality level of the media content (Jungck, page 9. paragraph.75 and page.18, paragraph.125).

9. As per claims 21, 22, 23 & 26 Achour-Jungck disclosed the machine-readable medium of claim 21, wherein the providing the preferred list to the client is performed by the data center comprising a main repository of the media content and a table indicating the media content of edge sites on the preferred list of edge sites (Achour, col.7, lines 55-67 and col.8, lines 1-12 & 13-24).

Response to Arguments

10. Applicant's arguments filed 05/09/2005 have been fully considered but they are not persuasive.

11. When reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The conclusion

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of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

12. The applicant argued that “The roaming list or the monitoring of the power supply of Achour is not the same as generating a preferred list of edge sites upon receiving a media content request and providing the preferred list to the clients as recited by claim 1. Jangck, like Achour, does not teach or reasonably suggest any of the limitations from Achour.

As to applicant’s arguments Achour in an exemplary embodiment states that a list of preferred service provider system is kept in the roaming list in addition it also provides the option of carrier servicing to reprogram the device for the preferred roaming list for the benefit of the carrier and available service (col.7, lines 55-67 & col.8, lines 1-12).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Asghar Bilgrami
Examiner
Art Unit 2143


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